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Letter dated 30 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 May 2003 (S/2003/596).

The Counter-Terrorism Committee has received the attached third report from Ecuador submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. Arias
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 28 July 2003 from the Permanent Mission of Ecuador to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

The Permanent Mission of Ecuador to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and, with regard to his note of 28 April 2003, has the honour to transmit, for his information, the second supplementary report of the Republic of Ecuador submitted pursuant to Security Council resolution 1373 (2001) (see appendix).

The Permanent Mission of Ecuador to the United Nations deems it important to note that at present not all the requirements mentioned in the note of 28 April 2003 can be met in detail, since most of them involve legislative reforms that are in the process of enactment by the National Congress. However, the Counter-Terrorism Committee will concur that the submission of draft amendments to the Penal Code and of a money-laundering bill, two of the Committee's key requirements, constitute a significant advance.

It is worth noting that the above-mentioned drafts reflect the 40 recommendations of the Financial Action Task Force on Money Laundering (FATF), as endorsed by the Council of Authorities of the Financial Action Task Force of South America (GAFISUD) at its recent meeting in Argentina on 4 July 2003, and that, although the technical cooperation offered by multilateral agencies, including assistance with legislative reform and the creation of a financial intelligence unit against terrorist financing, has been slow to materialize, annex 2 to the second supplementary report* shows that provision is made for such a unit in the money-laundering bill.

* The annexes are on file with the Secretariat.

Appendix

Second supplementary report of the Republic of Ecuador to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

1. **Implementation measures**

1.1 The Government of Ecuador has noted and considered the further questions and comments with regard to the implementation of resolution 1373 (2001), transmitted by the Committee in its note S/AC.40/2003/MS/OC.246 of 28 April 2003 signed by the Chairman, Mr. Inocencio Arias. On the basis of that communication, it is submitting this second supplementary report.

1.2 The inter-agency committee has studied the possibility of making further amendments to the Penal Code, among which it has certainly considered the criminalization of the provision or collection of funds in Ecuador by any person or entity with the intention that they be used or in the knowledge that they are to be used to carry out terrorist acts. The draft amendments involve inserting after title III of the Penal Code, an entire chapter on money-laundering, the full text of which is attached to this report (annex 1). With respect to the provision or collection of funds, the proposed amendment reads as follows:

> "Article ___. Any person who acquires, conceals, invests, transfers, transports, transforms, holds, administers, converts, possesses or uses assets, knowing that such assets are derived from the activities of organized crime; terrorism; illicit trafficking of arms, human beings or organs; acts of corruption; fraud; extortion; kidnapping; crimes against the financial system; crimes related to trafficking in narcotic drugs or psychotropic substances; embezzlement; subversion of justice; extortion by a public official; theft or robbery of vehicles, jewels, precious metals or luxury goods; bribery; and counterfeiting of coins or banknotes in Ecuador or abroad, shall be liable to a term of 12 to 16 years of special long-term rigorous imprisonment and a fine of US$ 1,000 to US$ 100,000.
>
> Any person who gives the appearance of legality to assets derived from the above-mentioned activities, authenticates them, conceals or covers up their true nature, origin, location, destination or movement or the entitlement to them, or carries out any other act to conceal or cover up their illicit origin, shall also be subject to the foregoing penalty.
>
> The crime of money-laundering is autonomous and is not subject to statutory limitations."

1.3 The International Convention for the Suppression of the Financing of Terrorism was approved by the National Congress of Ecuador by means of resolution No. 24-031 of 10 February 2003 and ratified by the President of the Republic by means of Executive Decree No. 172-A of 25 February 2003, corrected by Executive Decree No. 471-B of 3 June 2003, copies of which are attached to this report (annex 2). At the time of depositing the instrument of ratification, Ecuador entered a reservation in accordance with article 24 of the Convention.

Ecuador has drafted a money-laundering bill, attached to this report (annex 3), which contains specific provisions for combating money-laundering, terrorist

financing. The bill incorporates the 40 recommendations of the Financial Action Task Force (FATF), as endorsed by the Financial Action Task Force of South America (GAFISUD) and recently adopted by the Council of Authorities, meeting in Argentina on 4 July 2003.

1.4 The proposed amendments to the Penal Code and other laws will incorporate specific provisions against terrorist financing and the power to not only freeze but also extinguish the ownership rights to funds, financial assets or economic resources of persons who commit or attempt to commit or facilitate or participate in acts of terrorism, including persons or entities acting on their behalf.

The proposed amendments to the Penal Code read as follows:

"Article ___. The judge or court that hands down a sentence for the crime of money-laundering shall, in that sentence, declare the extinction of the sentenced person's ownership rights to assets that were acquired illicitly."

Title V, chapter I, of the money-laundering bill establishes a whole series of precautionary measures, including:

"Article 18. Attachment or preventive seizure. The judge or court shall order precautionary measures of attachment or seizure of assets, products or instruments related to the crime of money-laundering, including the freezing of funds and of financial transactions involving assets, of whatever nature, that can be attached or seized as a preventive measure while the corresponding trial is ongoing.

Notice of attachment and other precautionary measures shall be given, within 24 hours after they are ordered, to the respective property and mercantile registries, the Superintendencies of Banks and Companies, the Deposit Guarantee Agency, the National Directorate of Land Transit and Transport and the Transit Commission of Guayas.

The judge or court conducting the proceedings may order the lifting of such measures at any time, provided there is legal justification for doing so.

Article 19. Confiscation of assets. When a person is convicted of the crime of money-laundering, the judge or court shall order confiscation by the State of:

(a) Assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal instruments evidencing ownership or other title to such assets, as well as the product of such assets and their proceeds, profits, and yields, and other resources derived from the disposal or swapping of assets acquired illicitly or intended for criminal activities or considered to be the product, effect, instrument or object of an illicit activity;

(b) Assets acquired by act between living persons, when the person providing them acquired them under the circumstances described in this chapter and the persons acquiring them acted wilfully, being aware of such circumstances; and

(c) Assets acquired by succession as a result of death, when they were acquired by the decedent under any of the circumstances provided for in this law.

When any of the assets, products or instruments mentioned in the preceding paragraphs cannot be confiscated owing to any act or omission on the part of the convicted person, the judge or court shall order the confiscation of any other of his assets having an equivalent value.

Article 20. Destination of confiscated assets, products or instruments. When, pursuant to a sentence, assets, products or instruments are confiscated in accordance with the preceding article and are not required to be destroyed and are not dangerous to the public, they shall be administered by the Financial Intelligence Unit until such time as the advisory board decides on their final use, in conformity with the rules that it will issue for that purpose."

Furthermore, article 14, paragraph 9, of the money-laundering bill empowers the Financial Intelligence Unit, established thereunder "to carry out the functions of judicial depositary of assets, products or instruments subject to preventive attachment or seizure in proceedings related to money-laundering and to carry out those functions through the Assets Management Subdirectorate created for that purpose under its operational statute".

1.5 The bill regulating the activities of non-profit organizations is still under consideration and the inter-agency committee has not yet produced a complete outline of its provisions. It should be pointed out, however, that the provisions of both the proposed amendments to the Penal Code and the future Money-Laundering Act will also be fully and wholly applicable to funds collected by organizations which have or claim to have charitable, social or cultural goals.

1.6 Both the amendments to the Penal Code and the money-laundering bill provide for specific measures to regulate money transfers, in keeping with the spirit of resolution 1373 (2001).

The amendments to the Penal Code provide that:

"Article ___. Any person who engages in the smuggling of currency and monetary instruments in order to take them into or out of the country, using for their transport international courier companies, passengers on commercial or private flights, freight services or land vehicles travelling to other countries, shall be liable to a term of 12 to 16 years of special long-term rigorous imprisonment and a fine of US$10,000 to US$ 100,000."

The money-laundering bill provides as follows:

"Article 24. Reporting of suspicious or unusual financial transactions. For the purposes of this bill:

A suspicious act, operation or transaction is an action which is irregular or anomalous in relation to the normal, frequent and customary functions or activities of persons or entities and their customers, whether the latter are usual or occasional, and which, by its conduct, appearance, the documentation used, the information provided or lack thereof, the frequency or amount of such transactions or the involvement of third parties, suggests that the assets that are the object of the suspicious transaction may be of illicit origin.

Unusual transactions are transactions whose amount, characteristics and frequency bear no relation to the economic activity of the customer, exceed normal market parameters or have no apparent legal justification.

Financial institutions shall immediately report suspicious and unusual transactions to the Financial Intelligence Unit.

Article 27. Notification of the entry to or departure from the national territory of currency and bearer negotiable instruments. The Financial Intelligence Unit shall be notified of the transport, entry to or departure from the country of national or foreign currency, negotiable instruments or any other asset whose value is equal to or greater than US$ 10,000 or its equivalent in other currencies.

Any person who does not declare or falsely declares to the competent authorities information relating to the transport, remittance or receipt of the assets referred to in the preceding paragraph shall be subject to the administrative, civil or criminal penalties laid down in the new title inserted after title III of the Penal Code.

The National Police is empowered to withhold any of the instruments or assets referred to in the preceding paragraphs that have not been declared or have been declared falsely and shall transmit them with the corresponding report to the Public Prosecutor's Office."

In any case, there is currently a legal obligation to register the origin and destination of funds involved in any transaction greater than US$ 5,000 for banks; US$ 4,000 for businesses, credit cards, foreign exchange companies, mutual funds and finance companies; and US$ 2,000 for savings and loan cooperatives. Each financial institution must record this information and report it to the State supervisory authorities. The legal basis for this obligation is found in title VIII, subtitle IV, chapter II, article 3, of the Codification of Resolutions of the Superintendency of Banks and Insurance and of the Board of the Central Bank. The instructions regarding amounts and entities have been in force since they were issued by the authority on 22 September 2000 and are fully respected and obeyed in the country.

117. The draft legislation discussed in the preceding paragraph includes specific provisions for reporting suspicious transactions, in particular article 23 of the money-laundering bill and the amendments to the Penal Code:

"Article ___. Any person who is suspected of committing crimes of money-laundering and who directly or through an intermediary makes expenditures or increases his assets or those of a third party in an amount disproportionate to his income, without establishing the legality of the means used to make those expenditures or increase those assets, shall be liable to a term of 12 to 16 years of special long-term rigorous imprisonment and a fine of US$10,000 to US$ 100,000."

118. The draft amendments to the Penal Code focused on the acts of money-laundering and terrorist financing, but thorough consideration will be given to the criminalization of the recruitment of members of terrorist groups and also to eliminating the supply of weapons to terrorists, as called for in resolution 1373 (2001).

119. As indicated in the previous report, there are various Ecuadorian laws which prohibit the use of Ecuadorian territory for acts of terrorism, in whatever form, and which allow the authorities to take legal action to suppress them. Those laws include

the Constitution of the Republic, the National Security Act, the Penal Code, the Code of Criminal Procedure, the Immigration Act and also the relevant international instruments signed by Ecuador, which have been incorporated into domestic law. On the basis of all those laws, the national authorities can act to prevent the use of Ecuadorian territory to facilitate terrorist acts.

1.10 Information on the International Convention for the Suppression of Terrorist Bombings is given under section 1.3 of this report.

The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf were ratified by Executive Decree No. 158 of 20 February 2003 and the instruments of ratification were deposited with the International Maritime Organization on 10 March 2003.

The supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation was submitted to the National Congress for approval. On 24 June 2003, the Congress decided that, under article 161 of the Constitution, the Protocol did not require congressional approval. Accordingly, the executive decree and instrument of accession to the Protocol is ready for signature by the President of the Republic.

So far, Ecuador has neither signed nor acceded to the International Convention for the Suppression of Terrorist Bombings. The Convention is the subject of consultations and is awaiting the opinion of the Public Prosecutor's Office, the Office of the Procurator-General, the Ministry of National Defence and the Ministry of Government and Police.

1.11 As described in the previous report, the provision in article 163 of the Constitution is categorical: all the norms of international treaties and agreements become part of the country's legal system and even take precedence over lower-level laws and other norms. The absence of specific domestic legal provisions does not prevent their application, since under article 18 of the Constitution, the provisions of international instruments become directly and immediately applicable by and before any judge, court or authority.

1.12 In response to the Committee's request, a copy of Ecuador's report to the third regular session of the Inter-American Committee against Terrorism, held in San Salvador from 22 to 24 January 2003, is attached (annex 4).

2. Assistance and guidance

2.1 Ecuador is still interested in receiving any assistance and cooperation that might help ensure the optimum implementation of resolution 1373 (2001) in the country. In particular, as mentioned earlier, Ecuador would be interested in receiving advice from legislative experts, in order to have sufficient support for the legal reforms that the country needs to make in order to bring its legislation up to date and comply with the requirements of the international community and the urgent demands imposed by such a serious threat as terrorism. The country would also welcome advice on the implementation and follow-up of all the mandates contained in United Nations resolutions on the subject, and on the new legislation to be adopted shortly. Another specific aspect on which international assistance is needed is in setting up and operating a financial intelligence unit specialized in the control

and prevention of activities related to terrorist financing, as envisaged in the money-laundering bill.

2.2 The inter-agency committee has access to the Committee's web site on which all relevant information on available assistance is posted. It will certainly consult it in due course in order to identify assistance and cooperation mechanisms.

2.3 Further to the Committee's suggestion, Ecuador has begun talks and made arrangements, both through its Permanent Mission in New York and its Embassy in Washington, D.C., to receive assistance in combating money-laundering and terrorist financing under the relevant programmes of the International Monetary Fund and the World Bank. As indicated in this report, particular account has been taken of the special needs involved in amending Ecuador's legislation to bring it into line with the relevant resolutions and international conventions.

2.4 Based on the guidelines received from the Committee's Technical Assistance Team and after study and analysis, the inter-agency committee will draw up a specific, detailed technical proposal for the most urgent assistance required by Ecuador in this connection.

2.5 As the Committee will note, Ecuador has duly complied with all the Security Council resolutions on terrorism and is endeavouring to apply all its recommendations effectively. For the time being, therefore, the country has not felt the need for a discussion with the Committee's experts, but it does not rule out the possibility of holding such a discussion in the future and is obviously open to receiving any of the experts in the country and establishing a mutually enriching and positive dialogue.

2.6 At this stage, Ecuador has not requested any assistance, but it may do so later. It also has not reached any agreements with other States on any aspect of the implementation of resolution 1373 (2001).